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7 **UNITED STATES DISTRICT COURT**  
8 **CENTRAL DISTRICT OF CALIFORNIA**  
9

10 GOLD VALUE INTERNATIONAL  
11 TEXTILE, INC., a California  
12 Corporation, individually and doing  
13 business as "FIESTA FABRIC,"

14 Plaintiff,

15 vs.

16 SUGAR BERRY, a Business Entity of  
17 Unknown Form; ZULILY, LLC, a  
18 Delaware Limited Liability Company;  
19 and DOES 1 through 10,

20 Defendants.  
21

Case No.: 2:18-cv-03555-R-JEM

Assigned to: Hon. Manuel L. Real  
United States District Judge

Referred to: Hon. John E. McDermott  
United States Magistrate Judge

~~PROPOSED~~ PROTECTIVE  
ORDER<sup>1</sup>

Case Filed: April 23, 2018  
Trial Date: None Set

22  
23 1. A. PURPOSES AND LIMITATIONS  
24

25 Discovery in this action is likely to involve production of confidential,  
26 proprietary or private information for which special protection from public  
27

28 <sup>1</sup> This Stipulated Protective Order is substantially based on the model protective  
order provided under Magistrate Judge Gail J. Standish's Procedures.

1 disclosure and from use for any purpose other than prosecuting this litigation may  
2 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to  
3 enter the following Stipulated Protective Order. The parties acknowledge that this  
4 Order does not confer blanket protections on all disclosures or responses to  
5 discovery and that the protection it affords from public disclosure and use extends  
6 only to the limited information or items that are entitled to confidential treatment  
7 under the applicable legal principles.

8 B. GOOD CAUSE STATEMENT

9 This action is likely to involve trade secrets, customer and pricing lists and  
10 other valuable research, development, commercial, financial, technical and/or  
11 proprietary information for which special protection from public disclosure and  
12 from use for any purpose other than prosecution of this action is warranted. Such  
13 confidential and proprietary materials and information consist of, among other  
14 things, confidential business or financial information, information regarding  
15 purchase and sale prices of fabric or garments by suppliers, manufacturers,  
16 importers, distributors or fashion retailers, information regarding confidential  
17 business practices, information regarding the creation, purchase or sale of graphics  
18 used on textiles and garments or other confidential commercial information  
19 (including information implicating privacy rights of third parties), information  
20 generally unavailable to the public, or which may be privileged or otherwise  
21 protected from disclosure under state or federal statutes, court rules, case decisions,  
22 or common law. Accordingly, to expedite the flow of information, to facilitate the  
23 prompt resolution of disputes over confidentiality of discovery materials, to  
24 adequately protect information the parties are entitled to keep confidential, to ensure  
25 that the parties are permitted reasonable necessary uses of such material in  
26 preparation for and in the conduct of trial, to address their handling at the end of the  
27 litigation, and serve the ends of justice, a protective order for such information is  
28 justified in this matter. It is the intent of the parties that information will not be

1 designated as confidential for tactical reasons and that nothing be so designated  
2 without a good faith belief that it has been maintained in a confidential, non-public  
3 manner, and there is good cause why it should not be part of the public record of this  
4 case.

5 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER SEAL

6 The parties further acknowledge, as set forth in Section 12.3, below, that this  
7 Stipulated Protective Order does not entitle them to file confidential information  
8 under seal; Local Civil Rule 79-5 sets forth the procedures that must be followed  
9 and the standards that will be applied when a party seeks permission from the court  
10 to file material under seal.

11 There is a strong presumption that the public has a right of access to judicial  
12 proceedings and records in civil cases. In connection with non-dispositive motions,  
13 good cause must be shown to support a filing under seal. *See Kamakana v. City and*  
14 *County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v. Gen. Motors*  
15 *Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v. Sony Electronics,*  
16 *Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective orders  
17 require good cause showing), and a specific showing of good cause or compelling  
18 reasons with proper evidentiary support and legal justification, must be made with  
19 respect to Protected Material that a party seeks to file under seal. The parties' mere  
20 designation of Disclosure or Discovery Material as CONFIDENTIAL does not—  
21 without the submission of competent evidence by declaration, establishing that the  
22 material sought to be filed under seal qualifies as confidential, privileged, or  
23 otherwise protectable—constitute good cause.

24 Further, if a party requests sealing related to a dispositive motion or trial, then  
25 compelling reasons, not only good cause, for the sealing must be shown, and the  
26 relief sought shall be narrowly tailored to serve the specific interest to be protected.  
27 *See Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-79 (9th Cir. 2010). For  
28 each item or type of information, document, or thing sought to be filed or introduced

1 under seal in connection with a dispositive motion or trial, the party seeking  
2 protection must articulate compelling reasons, supported by specific facts and legal  
3 justification, for the requested sealing order. Again, competent evidence supporting  
4 the application to file documents under seal must be provided by declaration.

5 Any document that is not confidential, privileged, or otherwise protectable in  
6 its entirety will not be filed under seal if the confidential portions can be redacted.  
7 If documents can be redacted, then a redacted version for public viewing, omitting  
8 only the confidential, privileged, or otherwise protectable portions of the document,  
9 shall be filed. Any application that seeks to file documents under seal in their  
10 entirety should include an explanation of why redaction is not feasible.

## 11 2. DEFINITIONS

12 2.1 Action: [this pending federal lawsuit]. [\*Option: consolidated or  
13 related actions.]

14 2.2 Challenging Party: a Party or Non-Party that challenges the  
15 designation of information or items under this Order.

16 2.3 “CONFIDENTIAL” Information or Items: information (regardless of  
17 how it is generated, stored or maintained) or tangible things that qualify for  
18 protection under Federal Rule of Civil Procedure 26(c), and as specified above in  
19 the Good Cause Statement.

20 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as  
21 their support staff).

22 2.5 Designating Party: a Party or Non-Party that designates information or  
23 items that it produces in disclosures or in responses to discovery as  
24 “CONFIDENTIAL.”

25 2.6 Disclosure or Discovery Material: all items or information, regardless  
26 of the medium or manner in which it is generated, stored, or maintained (including,  
27 among other things, testimony, transcripts, and tangible things), that are produced or  
28 generated in disclosures or responses to discovery in this matter.

1           2.7 Expert: a person with specialized knowledge or experience in a matter  
2           pertinent to the litigation who has been retained by a Party or its counsel to serve as  
3           an expert witness or as a consultant in this Action.

4           2.8 House Counsel: attorneys who are employees of a party to this Action.  
5           House Counsel does not include Outside Counsel of Record or any other outside  
6           counsel.

7           2.9 Non-Party: any natural person, partnership, corporation, association or  
8           other legal entity not named as a Party to this action.

9           2.10 Outside Counsel of Record: attorneys who are not employees of a  
10          party to this Action but are retained to represent or advise a party to this Action and  
11          have appeared in this Action on behalf of that party or are affiliated with a law firm  
12          that has appeared on behalf of that party, and includes support staff.

13          2.11 Party: any party to this Action, including all of its officers, directors,  
14          employees, consultants, retained experts, and Outside Counsel of Record (and their  
15          support staffs).

16          2.12 Producing Party: a Party or Non-Party that produces Disclosure or  
17          Discovery Material in this Action.

18          2.13 Professional Vendors: persons or entities that provide litigation  
19          support services (e.g., photocopying, videotaping, translating, preparing exhibits or  
20          demonstrations, and organizing, storing, or retrieving data in any form or medium)  
21          and their employees and subcontractors.

22          2.14 Protected Material: any Disclosure or Discovery Material that is  
23          designated as "CONFIDENTIAL."

24          2.15 Receiving Party: a Party that receives Disclosure or Discovery  
25          Material from a Producing Party.

26          3. SCOPE

27          The protections conferred by this Stipulation and Order cover not only  
28          Protected Material (as defined above), but also (1) any information copied or

1 extracted from Protected Material; (2) all copies, excerpts, summaries, or  
2 compilations of Protected Material; and (3) any testimony, conversations, or  
3 presentations by Parties or their Counsel that might reveal Protected Material.

4 Any use of Protected Material at trial shall be governed by the orders of the  
5 trial judge. This Order does not govern the use of Protected Material at trial.

6 4. DURATION

7 Once a case proceeds to trial, information that was designated as  
8 CONFIDENTIAL or maintained pursuant to this protective order used or introduced  
9 as an exhibit at trial becomes public and will be presumptively available to all  
10 members of the public, including the press, unless compelling reasons supported by  
11 specific factual findings to proceed otherwise are made to the trial judge in advance  
12 of the trial. *See Kamakana*, 447 F.3d at 1180-81 (distinguishing “good cause”  
13 showing for sealing documents produced in discovery from “compelling reasons”  
14 standard when merits-related documents are part of court record). Accordingly, the  
15 terms of this protective order do not extend beyond the commencement of the trial.

16 5. DESIGNATING PROTECTED MATERIAL

17 5.1 Exercise of Restraint and Care in Designating Material for Protection.

18 Each Party or Non-Party that designates information or items for protection under  
19 this Order must take care to limit any such designation to specific material that  
20 qualifies under the appropriate standards. The Designating Party must designate for  
21 protection only those parts of material, documents, items or oral or written  
22 communications that qualify so that other portions of the material, documents, items  
23 or communications for which protection is not warranted are not swept unjustifiably  
24 within the ambit of this Order.

25 Mass, indiscriminate or routinized designations are prohibited. Designations  
26 that are shown to be clearly unjustified or that have been made for an improper  
27 purpose (e.g., to unnecessarily encumber the case development process or to impose  
28

unnecessary expenses and burdens on other parties) may expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection, that Designating Party must promptly notify all other Parties that it is withdrawing the inapplicable designation.

**5.2 Manner and Timing of Designations.** Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) for information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix at a minimum, the legend "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that contains protected material. If only a portion of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

A Party or Non-Party that makes original documents available for inspection need not designate them for protection until after the inspecting Party has indicated which documents it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order. Then, before producing the specified documents, the Producing Party must affix the "CONFIDENTIAL legend" to each page that contains Protected Material. If only a portion of the material on a page qualifies for protection, the Producing Party also

1 must clearly identify the protected portion(s) (e.g., by making appropriate markings  
2 in the margins).

3 (b) for testimony given in depositions that the Designating Party identifies  
4 the Disclosure or Discovery Material on the record, before the close of the  
5 deposition all protected testimony.

6 (c) for information produced in some form other than documentary and  
7 for any other tangible items, that the Producing Party affix in a prominent place on  
8 the exterior of the container or containers in which the information is stored the  
9 legend "CONFIDENTIAL." If only a portion or portions of the information  
10 warrants protection, the Producing Party, to the extent practicable, shall identify the  
11 protected portion(s).

12 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
13 failure to designate qualified information or items does not, standing alone, waive  
14 the Designating Party's right to secure protection under this Order for such material.  
15 Upon timely correction of a designation, the Receiving Party must make reasonable  
16 efforts to assure that the material is treated in accordance with the provisions of this  
17 Order.

## 18 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

19 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
20 designation of confidentiality at any time that is consistent with the Court's  
21 Scheduling Order.

22 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
23 resolution process under Local Rule 37.1 et seq.

24 6.3 The burden of persuasion in any such challenge proceeding shall be on  
25 the Designating Party. Frivolous challenges, and those made for an improper  
26 purpose (e.g., to harass or impose unnecessary expenses and burdens on other  
27 parties) may expose the Challenging Party to sanctions. Unless the Designating  
28 Party has waived or withdrawn the confidentiality designation, all parties shall



1 continue to afford the material in question the level of protection to which it is  
2 entitled under the Producing Party's designation until the Court rules on the  
3 challenge.

4  
5 7. ACCESS TO AND USE OF PROTECTED MATERIAL

6 7.1 Basic Principles. A Receiving Party may use Protected Material that is  
7 disclosed or produced by another Party or by a Non-Party in connection with this  
8 Action only for prosecuting, defending or attempting to settle this Action. Such  
9 Protected Material may be disclosed only to the categories of persons and under the  
10 conditions described in this Order. When the Action has been terminated, a  
11 Receiving Party must comply with the provisions of section 13 below (FINAL  
12 DISPOSITION).

13 Protected Material must be stored and maintained by a Receiving Party at a  
14 location and in a secure manner that ensures that access is limited to the persons  
15 authorized under this Order.

16 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless  
17 otherwise ordered by the court or permitted in writing by the Designating Party, a  
18 Receiving Party may disclose any information or item designated  
19 "CONFIDENTIAL" only to:

20 (a) the Receiving Party's Outside Counsel of Record in this Action, as  
21 well as employees of said Outside Counsel of Record to whom it is reasonably  
22 necessary to disclose the information for this Action;

23 (b) the officers, directors, and employees (including House Counsel) of  
24 the Receiving Party to whom disclosure is reasonably necessary for this Action;

25 (c) Experts (as defined in this Order) of the Receiving Party to whom  
26 disclosure is reasonably necessary for this Action and who have signed the  
27 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

28 (d) the court and its personnel;

- 1 (e) court reporters and their staff;
- 2 (f) professional jury or trial consultants, mock jurors, and Professional
- 3 Vendors to whom disclosure is reasonably necessary for this Action and who have
- 4 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);
- 5 (g) the author or recipient of a document containing the information or a
- 6 custodian or other person who otherwise possessed or knew the information;
- 7 (h) during their depositions, witnesses, and attorneys for witnesses, in the
- 8 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
- 9 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will
- 10 not be permitted to keep any confidential information unless they sign the
- 11 "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise
- 12 agreed by the Designating Party or ordered by the court. Pages of transcribed
- 13 deposition testimony or exhibits to depositions that reveal Protected Material may
- 14 be separately bound by the court reporter and may not be disclosed to anyone except
- 15 as permitted under this Stipulated Protective Order; and
- 16 (i) any mediator or settlement officer, and their supporting personnel,
- 17 mutually agreed upon by any of the parties engaged in settlement discussions.

18 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED

19 IN OTHER LITIGATION

20 If a Party is served with a subpoena or a court order issued in other litigation

21 that compels disclosure of any information or items designated in this Action as

22 "CONFIDENTIAL," that Party must:

23 (a) promptly notify in writing the Designating Party. Such notification

24 shall include a copy of the subpoena or court order;

25 (b) promptly notify in writing the party who caused the subpoena or order

26 to issue in the other litigation that some or all of the material covered by the

27 subpoena or order is subject to this Protective Order. Such notification shall include

28 a copy of this Stipulated Protective Order; and

1 (c) cooperate with respect to all reasonable procedures sought to be  
2 pursued by the Designating Party whose Protected Material may be affected.

3 If the Designating Party timely seeks a protective order, the Party served with  
4 the subpoena or court order shall not produce any information designated in this  
5 action as "CONFIDENTIAL" before a determination by the court from which the  
6 subpoena or order issued, unless the Party has obtained the Designating Party's  
7 permission. The Designating Party shall bear the burden and expense of seeking  
8 protection in that court of its confidential material and nothing in these provisions  
9 should be construed as authorizing or encouraging a Receiving Party in this Action  
10 to disobey a lawful directive from another court.

11 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE  
12 PRODUCED IN THIS LITIGATION

13 (a) The terms of this Order are applicable to information produced by a  
14 Non-Party in this Action and designated as "CONFIDENTIAL." Such information  
15 produced by Non-Parties in connection with this litigation is protected by the  
16 remedies and relief provided by this Order. Nothing in these provisions should be  
17 construed as prohibiting a Non-Party from seeking additional protections.

18 (b) In the event that a Party is required, by a valid discovery request, to  
19 produce a Non-Party's confidential information in its possession, and the Party is  
20 subject to an agreement with the Non-Party not to produce the Non-Party's  
21 confidential information, then the Party shall:

22 (1) promptly notify in writing the Requesting Party and the Non-Party  
23 that some or all of the information requested is subject to a confidentiality  
24 agreement with a Non-Party;

25 (2) promptly provide the Non-Party with a copy of the Stipulated  
26 Protective Order in this Action, the relevant discovery request(s), and a reasonably  
27 specific description of the information requested; and

28 (3) make the information requested available for inspection by the

1 Non-Party, if requested.

2 (c) If the Non-Party fails to seek a protective order from this court within  
3 14 days of receiving the notice and accompanying information, the Receiving Party  
4 may produce the Non-Party's confidential information responsive to the discovery  
5 request. If the Non-Party timely seeks a protective order, the Receiving Party shall  
6 not produce any information in its possession or control that is subject to the  
7 confidentiality agreement with the Non-Party before a determination by the court.  
8 Absent a court order to the contrary, the Non-Party shall bear the burden and  
9 expense of seeking protection in this court of its Protected Material.

10 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

11 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
12 Protected Material to any person or in any circumstance not authorized under this  
13 Stipulated Protective Order, the Receiving Party must immediately (a) notify in  
14 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts  
15 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or  
16 persons to whom unauthorized disclosures were made of all the terms of this Order,  
17 and (d) request such person or persons to execute the "Acknowledgment and  
18 Agreement to Be Bound" that is attached hereto as Exhibit A.

19 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
20 PROTECTED MATERIAL

21 When a Producing Party gives notice to Receiving Parties that certain  
22 inadvertently produced material is subject to a claim of privilege or other protection,  
23 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil  
24 Procedure 26(b)(5)(B). This provision is not intended to modify whatever  
25 procedure may be established in an e-discovery order that provides for production  
26 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and  
27 (e), insofar as the parties reach an agreement on the effect of disclosure of a  
28 communication or information covered by the attorney-client privilege or work

1 product protection, the parties may incorporate their agreement in the stipulated  
2 protective order submitted to the court.

3 12. MISCELLANEOUS

4 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
5 person to seek its modification by the Court in the future.

6 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
7 Protective Order, no Party waives any right it otherwise would have to object to  
8 disclosing or producing any information or item on any ground not addressed in this  
9 Stipulated Protective Order. Similarly, no Party waives any right to object on any  
10 ground to use in evidence of any of the material covered by this Protective Order.

11 12.3 Filing Protected Material. A Party that seeks to file under seal any  
12 Protected Material must comply with Local Civil Rule 79-5. Protected Material  
13 may only be filed under seal pursuant to a court order authorizing the sealing of the  
14 specific Protected Material at issue. If a Party's request to file Protected Material  
15 under seal is denied by the court, then the Receiving Party may file the information  
16 in the public record unless otherwise instructed by the court.

17 13. FINAL DISPOSITION

18 After the final disposition of this Action, as defined in paragraph 4, within 60  
19 days of a written request by the Designating Party, each Receiving Party must return  
20 all Protected Material to the Producing Party or destroy such material. As used in  
21 this subdivision, "all Protected Material" includes all copies, abstracts, compilations,  
22 summaries, and any other format reproducing or capturing any of the Protected  
23 Material. Whether the Protected Material is returned or destroyed, the Receiving  
24 Party must submit a written certification to the Producing Party (and, if not the same  
25 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies  
26 (by category, where appropriate) all the Protected Material that was returned or  
27 destroyed and (2) affirms that the Receiving Party has not retained any copies,  
28 abstracts, compilations, summaries or any other format reproducing or capturing any

1 of the Protected Material. Notwithstanding this provision, Counsel are entitled to  
2 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing  
3 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert  
4 reports, attorney work product, and consultant and expert work product, even if such  
5 materials contain Protected Material. Any such archival copies that contain or  
6 constitute Protected Material remain subject to this Protective Order as set forth in  
7 Section 4 (DURATION).

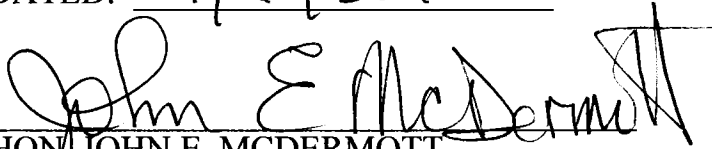
1    14.    VIOLATION

2    Any violation of this Order may be punished by appropriate measures including,  
3    without limitation, contempt proceedings and/or monetary sanctions.

4    IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

5  
6  
7    FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

8  
9    DATED: 9/6/2018

10  
11      
12    HON. JOHN E. MCDERMOTT  
13    United States Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3  
4 I, \_\_\_\_\_ [print or type full name], of  
5 \_\_\_\_\_ [print or type full address], declare under penalty of perjury  
6 that I have read in its entirety and understand the Stipulated Protective Order that  
7 was issued by the United States District Court for the Central District of California  
8 on [date] in the case of \_\_\_\_\_ **[insert formal name of the case and the**  
9 **number and initials assigned to it by the court]**. I agree to comply with and to be  
10 bound by all the terms of this Stipulated Protective Order and I understand and  
11 acknowledge that failure to so comply could expose me to sanctions and punishment  
12 in the nature of contempt. I solemnly promise that I will not disclose in any manner  
13 any information or item that is subject to this Stipulated Protective Order to any  
14 person or entity except in strict compliance with the provisions of this Order.  
15 I further agree to submit to the jurisdiction of the United States District Court for the  
16 Central District of California for enforcing the terms of this Stipulated Protective  
17 Order, even if such enforcement proceedings occur after termination of this action.  
18 I hereby appoint \_\_\_\_\_ [print or type full name] of  
19 \_\_\_\_\_ [print or type full address and  
20 telephone number] as my California agent for service of process in connection with  
21 this action or any proceedings related to enforcement of this Stipulated Protective  
22 Order.

23 Date: \_\_\_\_\_

24 City and State where sworn and signed: \_\_\_\_\_

25  
26 Printed name: \_\_\_\_\_

27  
28 Signature: \_\_\_\_\_